898.

SUPREME COURT OF THE UNITED STATES.

No. 69.

WILLIAM B. STOKES, *Plaintiff in Error,*

vs.

FRANCIS W. SALTONSTALL.

ERROR TO THE CIRCUIT COURT U. S. FOR MARYLAND.

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THE UNITED STATES OF AMERICA.

District of Maryland, to wit:

At a Circuit Court of the United States for the fourth Circuit, in and for the Maryland District, begun and held at the City of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and thirty-eight,

Present, The Honourable

ROGER B. TANEY, Chief Justice of the Supreme Court of the United States.
UPTON S. HEATH, Judge of Maryland District.
NATHANIEL WILLIAMS, Esquire, Attorney.
NICHOLAS SNIDER, Esquire, Marshall.
THOMAS SPICER, Clerk.

Among other were the following proceedings, to wit:

FRANCIS W. SALTONSTALL
vs.
WILLIAM B. STOKES.

Be it remembered, that heretofore, to wit, on the thirteenth day of September, in the year of our Lord one thousand eight hundred and thirty-six, the said Francis W. Saltonstall, by Reverdy Johnson and John V. L. McMahon, his attorneys, prosecuted and sued forth out of the Circuit Court here the writ of the United States of America of capias ad respondendum, directed to the marshal of the Maryland District, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA.

District of Maryland, to wit:

To the Marshal for Maryland District, Greeting:

[SEAL] We command you that you take Richard C. Stockton and William B. Stokes, citizens of the State of Maryland, if they shall be found in your District, and that them so taken, you safe keep, so that you have their bodies before the Judges of the Circuit Court of the United States, for the fourth Circuit, in and for the Maryland District, at the United States Court Room, in the City of Baltimore, on the first day of November next, to answer unto Francis W. Saltonstall, a citizen of the State of Massachusetts, in a plea of trespass upon the case, &c. Hereof you are not to fail at your peril, and have you then and there this writ: Witness the Honourable Roger B. Taney, Chief Justice Writ.

of our Supreme Court, the first Monday in August, in the year of our Lord one thousand eight hundred and thirty-six. R. J. & J. V. L. McM., issued 13th day of September, 1836.

THOMAS SPICER,
Clerk Circuit Court.

And the aforesaid Francis W. Saltonstall, by his attorneys aforesaid, and the said Richard C. Stockton and William B. Stokes, by John Glenn, their attorney, on the day of prosecuting and suing forth of the aforesaid writ, filed in the Circuit Court here an agreement in the words and of the tenor following, to wit:

Agreement. FRANCIS W. SALTONSTALL
vs.
RICHARD C. STOCKTON &
WILLIAM B. STOKES.

In the Circuit Court of the United States, for the Maryland District, November Term, 1836. Originals.—Action on the Case.

To the Clerk of the Circuit Court of the United States for the Maryland District.

Mr. Spicer will be pleased to docket the above case by consent on the original docket of said Court, for November Term, 1836, and enter Mr. Glenn's appearance for the defendants at that Term. The above action being brought to recover damages for alleged injuries to the plaintiff's wife, and to the plaintiff himself, by the upsetting of a stage owned by the defendants, or resulting from it. It is further agreed, to save to the parties the inconvenience and expense of two suits, that the plaintiff may recover in the above action any damages which could be recovered either in an action by the plaintiff and his wife, or in an action by the plaintiff alone, and that no objection shall be taken in the above action to the recovery of any such damages properly recoverable in an action by the plaintiff and his wife against the defendants on account of the non-joinder of the wife. And it is also agreed that in the above action no objection shall be taken on account of the non-joinder of any other person or persons as defendants.

R. JOHNSON, } *Attorneys for*
J. V. L. McMAHON, } *Plaintiff.*
JOHN GLENN, *Attorney for Dfts.*

September 13th, 1836.

At which mentioned first day of November, in the year of our Lord one thousand eight hundred and thirty-six, being the day of the return of the aforegoing writ, comes into

the Circuit Court here, the said Francis W. Saltonstall, by his attorneys aforesaid, and the marshal of the Maryland District aforesaid, to wit, Nicholas Snider, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"*Cepi, Nicholas Snider, Marshal.*"

And the said Richard C. Stockton and William B. Stokes being called, appear in court here by John Glenn, their attorney.

Whereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon is continued until the first Monday in April next.

At which said first Monday of April, in the year of our Lord one thousand eight hundred and thirty seven, come again into the Circuit Court here, as well the said Francis W. Saltonstall by his attorneys aforesaid, as the said Richard C. Stockton and William B. Stokes by their attorney aforesaid.

And thereupon the said Francis W. Saltonstall by his attorneys aforesaid, declared against the said Richard C. Stockton and William B. Stokes in the plea aforesaid, in form following, to wit:

FRANCIS W. SALTONSTALL
vs.
RICHARD C. STOCKTON & WILLIAM B. STOKES.

Declaration

In the Circuit Court of the United States for the fourth Circuit in and for the Maryland District,

Richard C. Stockton and William B. Stokes, citizens of the state of Maryland, were attached to answer unto Francis W. Saltonstall, a citizen of the state of Massachusetts, in a plea of trespass upon the case, &c.

And thereupon the said Francis W. Saltonstall, the plaintiff in this action by John V. L. McMahon and R. Johnson, his attorneys, complains for that whereas, before the time of committing the grievances hereinafter mentioned, the said defendants, Richard C. Stockton and William B. Stokes, were the owners of a line of stage-coaches by them used and employed in carrying passengers from a certain place, to wit, the city of Baltimore, to a certain other place, to wit, the town of Wheeling, and being such owners, the said defendants, on the fifth day of December, in the year eighteen hundred and thirty-five, to wit, at the city of Baltimore, at the District of Maryland aforesaid, received into their said coaches of their said line, the plaintiff and Mrs.

Saltonstall, his wife, as passengers, to be carried and conveyed by their coaches of their, the defendants, said line of coaches on a journey, to wit, from the city of Baltimore aforesaid, to the town of Wheeling aforesaid, for a certain fare and reward, then and there paid to the said defendants therefor by the plaintiff, and by reason thereof, the said defendants ought to have carefully carried and conveyed the plaintiff and his said wife, by their said line of coaches, on their said journey from Baltimore to Wheeling; yet the said defendants, not regarding their duty on their said behalf afterwards and whilst they, the said defendants and their servants and agents, were carrying and conveying the plaintiff and his said wife in one of their stage-coaches, belonging to their said line, on their journey aforesaid from Baltimore to Wheeling, conducted themselves so negligently, carelessly, and unskilfully in carrying and conveying the plaintiff and his wife in their said coach, that by and through the negligence, carelessness, unskilfulness, and default of themselves, the defendants, and their agents, and servants on that behalf, and for want of due care and attention of themselves, and their servants, and agents on that behalf, the said coach of the defendants, in which the plaintiff and his said wife then and there were as passengers, to be conveyed on their journey as aforesaid, and whilst the said coach was conveying them on their journey aforesaid from Baltimore to Wheeling, was then and there, to wit, on the sixth day of December, in the year aforesaid, at the District aforesaid, overturned and thrown down, and thrown upon the said wife of the plaintiff, then and there being a passenger therein, as aforesaid, by means whereof the said wife of the plaintiff had her hip bone fractured, and had several other bones of her body broken, and was otherwise greatly cut and bruised and wounded, insomuch that she, the said wife of the plaintiff, thereby then and there became very ill, and her life was endangered, and continued and remained thereafter ill, and in danger of losing her life for a long space of time, to wit, from thence until the first day of May next thereafter, and thereby also the said wife of the plaintiff then and there became, and was, and still is so much injured by the fractures, bruises, and wounds occasioned by the said overturning of the said coach, and especially by the said fracture of her hip bone, so that she has lost the free use of her limbs, and has become maimed and crippled and lame, and is likely to remain so during life, and so that she, the said wife of the plaintiff, still remains seriously unwell from the effect of the said fractures, bruises, and wounds, and is likely to continue lame, and an invalid therefrom during the residue of her life. And the said plaintiff further avers, that by reason of the said overturning of the said coach of the defendants, at the time and in the manner aforesaid, and by

reason of the fractures, bruises, wounds, and other injuries aforesaid to his said wife, occasioned by the said overturning aforesaid, at the district aforesaid, he, the said plaintiff, for a long space of time, to wit, from the said sixth day of December until the first of June next thereafter, was deprived of the comfort and society of his wife, and her aid, and was forced and obliged to lay out and expend large sums of money, and did actually expend large sums of money, in the whole amounting to one thousand dollars, in and about the cure and recovery of his wife, and in and about the necessary attendance upon her during her said illness; to wit, at the district aforesaid: and also that during all the said space of time last-mentioned, in consequence of the injuries to and illness of his said wife, occasioned by the aforesaid overturning of the defendants' coach in the manner aforesaid, he the said plaintiff and his said wife were thereby hindered and prevented from continuing their journey aforesaid, and were kept and detained at a certain inn, to wit, at Bevansville, in the district aforesaid, from the said sixth of December to the said first of June next thereafter, and the said plaintiff was thereby, during all that time, compelled to expend a large sum of money, to wit, the sum of one thousand dollars, in and about the necessary support and maintenance of his said wife, and also in and about the support of himself and others whilst in necessary attendance upon his said wife during her said illness, to wit, at the district aforesaid, and thereby also he the said plaintiff during all the said last-mentioned space of time, he the said plaintiff was compelled to remain in attendance upon his said wife at said inn in consequence of her extreme illness; and was thereby hindered from prosecuting his said journey and attending to his necessary affairs and business elsewhere during all that time, and was thereby deprived of great gains and profits which he would otherwise have made and obtained in the prosecution of his business. And the said plaintiff further avers, that when he and his said wife were received as passengers as aforesaid in the coaches of the defendants, on their journey aforesaid from Baltimore to Wheeling, and when the coach of the defendants was overturned in the manner aforesaid, and his said wife so as aforesaid injured thereby, he the said plaintiff was then travelling to the city of New Orleans in the state of Louisiana for the purpose of engaging in a commercial adventure, and had entered into a contract for that purpose, from the fulfilment of which contract he would have obtained and received a great sum of money by way of profit, to wit, the sum of ten thousand dollars, and that in consequence of said engagement and contract, he the plaintiff was then journeying with his wife to New Orleans to enable him, the plaintiff, to fulfil his said engagement and contract, and receive the benefits and profits thereof, at the

time when the injury aforesaid to his wife was occasioned by the upsetting of the defendants' coach in the manner aforesaid; and that by reason of the upsetting of the same as aforesaid, and the injuries aforesaid to his said wife thereby occasioned, and the illness of his said wife during all the time aforesaid, from the sixth day of December, when the said upsetting took place, until the first of June next thereafter, he the said plaintiff was compelled to remain near to and in attendance upon his said wife, in consequence of the aforesaid injuries done to his said wife, and her extreme illness therefrom, and to forego the prosecution of his said journey to New Orleans, and was thereby wholly deprived of the benefits of his said engagement and contract at New Orleans, in consequence of his inability thereby to fulfil the same according to its stipulations, so that the same was and is wholly lost; and he, the plaintiff, was and is thereby wholly deprived of the profits of the same, which but for said overturning and injuries to his said wife and the interruption of his journey thereby occasioned as aforesaid, amounting to the sum of ten thousand dollars, to wit, at the district aforesaid, he the plaintiff would otherwise have made and received. Wherefore, the said plaintiff saith that he is injured and hath sustained damage to the value of ten thousand dollars, and therefore he brings suit, &c.

R. JOHNSON, } *Attorneys for*
J. V. L. McMAHON, } *Plaintiff.*

And thereupon the parties aforesaid by their attorneys aforesaid, filed in the Circuit Court here an agreement in the words and of the tenor following, to wit:

Agreement. The above action of Saltonstall *vs.* Stockton and Stokes having been docketed by consent, under a written agreement, that for the purpose of saving expense to both parties, and promoting the convenient trial of the matter in controversy, the plaintiff might recover in it any damages which might be recovered in an action by himself and wife, or by himself alone, and that no objection should be taken because of the non-joinder of other persons as defendants who might be so interested with the defendants in the line of stages from Baltimore to Wheeling. It is agreed for the purposes of this action, that the defendants were owners of the line of stage-coaches from Baltimore to Wheeling in which the plaintiff and his wife were travelling, when the injury complained of to the wife is alleged to have occurred. And it is also agreed that all errors of pleading on both sides shall be, and are hereby released.

R. JOHNSON, } *Attorneys for*
J. V. L. McMAHON, } *Plaintiff.*
J. GLENN, *for Defendants.*

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, and their attorneys aforesaid, and by order of the court here thereon is further continued until the first Monday in October next.

At which said first Monday in October, in the year of our Lord one thousand eight hundred and thirty-seven, come again into the Circuit Court here as well the said Francis W. Saltonstall by his attorneys aforesaid, as the said Richard C. Stockton and William B. Stokes by their attorneys aforesaid. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and thirty-eight, come again into the Circuit Court here as well the said Francis W. Saltonstall by his attorneys aforesaid, as the said Richard C. Stockton and William B. Stokes by John Glenn and William Schley their attorneys.

Rule Security for costs

And thereupon on motion of the said Richard C. Stockton and William B. Stokes by their attorneys aforesaid, it is ruled by the court here, that the said Francis W. Saltonstall give security for costs in case he shall be nonsuited in the plea aforesaid, by the first Monday in November next, and it is said to the said Francis W. Saltonstall, that if he does not give security by the day aforesaid, judgment will be rendered against him by default; the same day is given to the said Richard C. Stockton and William B. Stokes there, &c.

Security for costs entered.

Whereupon comes into court here, in his proper person, John G. Proud of the said district, and undertakes for the said Francis W. Saltonstall, that if the said Francis W. Saltonstall in the plea aforesaid, shall be nonsuited, or from maintaining his action aforesaid shall be precluded, then the said Francis W. Saltonstall shall pay unto the said Richard C. Stockton and William B. Stokes all such costs and charges by them about their defence in this part sustained, which shall be adjudged unto the said Richard C. Stockton and William B. Stokes by the court here, or that he the said John G. Proud will do the same for him.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and thirty-eight, come again into the Circuit Court here, as well the said Francis

W. Saltonstall by his attorneys aforesaid, as the said William B. Stokes, one of the defendants by his attorneys aforesaid, and the said Richard C. Stockton doth not come.

Richard C. Stockton's death suggested.

And hereupon the said Francis W. Saltonstall by his attorneys aforesaid, suggest to the court here, that after the last continuance of the plea aforesaid, and before this day, at the district aforesaid, the said Richard C. Stockton, one of the parties defendant in the plea aforesaid, departed this life, and whom the said William B. Stokes hath survived, and this is not denied; therefore let all further proceedings against the said Richard B. Stockton cease.

Plea not guilty.

And thereupon the said William B. Stokes by his attorneys aforesaid, defends the wrong and injury, when and so forth, and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them in manner and form as the said plaintiff hath above complained against him, and of this he puts himself upon the country, &c., and the said Francis W. Saltonstall in like manner, &c.

Issue.

Therefore let a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.

Whereupon for trying the issue aforesaid, it is ordered by the court here that twenty persons from the pannel of petit jurors returned to the court here by the marshal of the Maryland district, be drawn by ballot, according to the statute in such case made and provided: and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons being called, come, to wit:

Jury.

Jarrett Hutchins, Lewis Kemp, George P. Waters, Thomas Wildey, Solomon Etting, William Trimble, Mark W. Jenkins, Benjamin Brown, John Berritt, Henry Bantz, William Eichilberger, William Barr, who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said William B. Stokes is guilty of the premises above upon him imposed, in manner and form as the said Francis W. Saltonstall above against him complains, and they assess the damages of him the said Francis W. Saltonstall by occasion of the premises to the sum of seven thousand one hundred and thirty dollars.

Verdict.

Judgment.

Therefore it is considered by the court here that the said Francis W. Saltonstall recover against the said William B. Stokes the said sum of seven thousand dollars, current money, his damages aforesaid, by the jury aforesaid, in form aforesaid assessed, as also the sum of

for his costs and charges by him about his suit in this behalf laid out and expended, &c.

to the said Francis W. Saltonstall by the court now here with his assent adjudged; and the said William B. Stokes in mercy, &c.

MEMORANDUM.

Before the jurors aforesaid withdrew from the bar of the court here, the said William B. Stokes by his attorneys aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:

Defend'nt's Bill of Exceptions.

FRANCIS W. SALTONSTALL
vs.
WILLIAM B. STOKES.

In the Circuit Court of the United States for the fourth Circuit in and for the District of Maryland.

The plaintiff to support the issue on his part, the following argument relative to the pleadings and evidence.

(Herein before inserted on page 9 of this record.)

And further offered in evidence the following commission, depositions, and return from New Orleans.

THE UNITED STATES OF AMERICA.

District of Maryland, Sct.

Commission to New Orleans.

To Bailie Peyton and Levi Pierce, Esquires, of New Orleans, Greeting:

[SEAL] Be it known, that you are appointed commissioners to examine evidences in a cause now depending in the Circuit Court of the United States, for the fourth circuit in and for the Maryland District; between Francis W. Saltonstall, plaintiff, and Richard C. Stockton and William B. Stokes, defendants. Therefore you, or either of you, are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you or either of you shall seem convenient, you cause to come before you or either of you, all such evidences as shall be named or produced to you or either of you, by either the plaintiff or defendants, and that you or either of you, examine them upon their corporal oaths, to be by you or either of you administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of any thing that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you or either of you into writing, you send the same with this commission, under your or either of your hands and seals to the said Circuit Court with all convenient speed. Witness the Honourable Roger

B. Taney, Chief Justice of our Supreme Court, the first Monday in August, in the year of our Lord one thousand eight hundred and thirty-seven.

J. V. L. McM., issued 20 September, 1837.

THOMAS SPICER,
Clerk Circuit Court.

(COMMISSIONER'S OATH.)

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions, of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to, and left with you, by either party, so help you God.

LEVI PIERCE,
BAILIE PEYTON,
Commissioners.

Sworn to and subscribed before me, this 9th day of May, 1838.

O. P. JACKSON, *Judge.*

UNITED STATES OF AMERICA.

State of Louisiana.

By Edward D. White, Governor of the State of Louisiana. These are to certify that O. P. Jackson, whose name is subscribed to the instrument of writing, herein annexed, is now, and was at the time of signing the same, one of the associate judges of the City Court of New Orleans; that his signature is genuine, and that all his official acts as such are entitled to full faith and credit.

Given at New Orleans, under my hand, and the seal of this state, this tenth day of May, one
[SEAL.] thousand eight hundred and thirty-eight, and of the Independence of the United States the sixty-second.

E. D. WHITE.

By the Governor
W. C. C. CLAIRBORNE.

(CLERK'S OATH.)

You shall truly, faithfully, and without partiality to any or either of the parties, in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before, and examined by the commissioners or either of them, named in the commission here-

unto annexed, as far forth as you are directed and employed by the said commissioners or either of them, to take, write down, and transcribe the said depositions, or any of them, so help you God.

J. R. STERRETT.

Sworn to and subscribed before us.

LEVI PIERCE,
BAILE PEYTON.

FRANCIS W. SALTONSTALL
vs.
RICHARD C. STOCKTON,
WILLIAM B. STOKES.

In the Circuit Court of the United States for the fourth Circuit, in and for the district of Maryland.

Interrogatories to be propounded to the witnesses to be examined on behalf of the plaintiff. Plaintiff's Interrogatories.

First. Do you know the plaintiff and the defendants in this cause, or either of them?

Second. Were you at any time during the winter of 1835—36, travelling with the plaintiff Francis W. Saltonstall and his wife as passengers in Stockton and Stokes' line of stagecoaches, from Baltimore to Wheeling? If you were, will you state whether you have any knowledge of the upsetting or overturning of any of the coaches or stages of said line, whilst you and the plaintiff and his wife, were so being conveyed in them?

Third. If you answer that you have any knowledge of the upsetting or overturning of any of said coaches as inquired of you in the next preceding interrogatory; will you state all the circumstances of such upsetting or overturning, and particularly who were the passengers in the coach or stage when it was so overturned, when it occurred and if at night or during the daytime? And also state whether any, and if any, what injury was done to the plaintiff's wife, or the plaintiff by such overturning of the coach or stage, and particularly the manner in which that injury, if any was occasioned.

Fourth. If you prove any overturning of the stage and injury to the plaintiff or his wife, under your answers to the preceding interrogatories, will you describe as particularly as your recollection will enable you, the place at which the stage or coach was so overturned, the nature and condition of the road at that place, and whether dangerous or difficult for travelling over it, or otherwise, and the distance of the place from any of the public houses or stage taverns on the road, or from Hancock or Cumberland. And will you also state who was the driver, driving the stage or coach when it was so overturned, if you know him or his name; and

whether then sober or intoxicated, and if intoxicated, whether he was so when he began to drive you, or became so whilst driving you, and before arriving at the place of the accident?

Fifth. If you prove any injury to the plaintiff's wife, or the plaintiff in your answers to the preceding interrogatories, will you state the extent of the injury as far as you observed it, where the party was removed to after the injury, whether the plaintiff and his wife were enabled to prosecute their journey after the injury with you, or where you left them, and what was the apparent condition of the party injured when you left them?

Sixth. If you know of any other matter or thing material to the plaintiff, will you state it as fully as if particularly interrogated thereto.

REVERDY JOHNSON,
JOHN V. L. McMAHON,
Attorneys for Plaintiff.

FRANCIS W. SALTONSTALL
vs.
RICHARD C. STOCKTON, and
WILLIAM B. STOKES.

In the Circuit Court of the United States for the fourth Circuit in and for the District of Maryland.

Cross interrogatories to be propounded to witnesses examined by plaintiff, on the part of the defendants.

Cross interrogatories.

First. If you answer that you have any knowledge of the upsetting or upturning of the stage referred to in the plaintiff's second interrogatory. In what condition was the road at the time referred to? And was or was not the road covered with ice, rendering it very difficult to pass at the time referred to?

Second. Would the plaintiff or wife have been injured if they had remained in the stage? or was any of the passengers injured who remained in the stage?

Third. If in answer to the plaintiff's fourth interrogatory, you answer that you know the driver, and that he was intoxicated, from what conduct, word or act of the driver's were you induced to believe he was intoxicated?

Fourth. At what speed per mile was the coach going at the time of the accident, and immediately previous thereto?

Fifth. Had or had not the driver, who was driving the coach at the time the accident occurred, driven the coach some seventeen miles previous to the accident, and did or did not the passengers express themselves satisfied with the driver at the last changing house before the accident occurred?

Sixth. Was or was not the day excessively cold in which the accident occurred? and was not the weather sleety and rainy?

J. GLENN, *for Defendants.*

STATE OF LOUISIANA.

City of New Orleans.

Know all men by these presents that we, Bailie Peyton and Levi Pierce, the commissioners appointed by the honorable the Circuit Court of the United States for the fourth Circuit in the District of Maryland, in a certain cause therein pending, wherein Francis W. Saltonstall is plaintiff, and Richard C. Stockton and William B. Stokes are defendants, having previously taken the oath prescribed, and having then appointed and sworn James R. Sterrett, of said city as our clerk, to take down and transcribe the depositions of the witnesses, did on the ninth day of May, in the year of our Lord 1838, at the hour of five o'clock P. M., cause to appear before us at the office of Levi Pierce, one of the commissioners, Mr. James Stiff, and Mrs. Jane Stiff, his wife: witnesses to be examined on behalf of plaintiff in said entitled suit, and having previously sworn the first named James Stiff, upon his corporal oath on the Holy Evangely of Almighty God, he answered and said as follows, to wit:

Deposition of James Stiff.

To the first interrogatory, I only know the plaintiff.

To the second interrogatory, I was during the winter of '35 and '36 travelling with the plaintiff and his wife, as passengers in one of Stockton & Stokes' line of stages, from Baltimore to Wheeling, and do personally know of the upsetting or overturning of the stage we were in.

To the third interrogatory, at the last change of horses the passengers generally remarked that the driver seemed to have drank too much to go on. Mr. Saltonstall, the plaintiff, went to the agent, or the person avowing himself as such, and who was acting in that capacity, and reported to him the observation made by the passengers; the agent replied that the driver was all straight, and that the appearance of being intoxicated was entirely owing to his having driven during the night previous, which had been excessively cold. When we arrived at about two miles from "Bevansville" we felt the stage strike against the mound or ridge on the right side of the road. Mr. Saltonstall on observing this, immediately jumped out as I believed with the intention of stopping the horses; Mrs. Saltonstall attempted to follow her husband, but fell to the ground at the very instant the stage upset, and fell directly on her. The passengers were Mr. and Mrs. Saltonstall, a lady and gentleman with whom I was unacquainted, and whose names I cannot now recall, and my wife and self. The upset took place on Sunday afternoon, the fifth day of December, at about four o'clock in the afternoon. It was broad daylight. The plaintiff's wife was dreadfully injured, we had to take her up and carry her to a log-house in the neighbourhood. The

injury was occasioned by the falling of the stage on her body.

To the fourth interrogatory, the road was perfectly level and in good travelling order; when I say level, I mean to say from side to side. There had been ice, but it had been so beaten down that there was only a little remaining on the sides of the road. The centre was entirely free of it. As I have stated, the place where the overturn occurred, was about two miles from "Bevansville," a kind of stopping place, or inn, which is about twenty-two miles from Cumberland, and about eighteen from Hancock, as I was informed. I did not consider the road as dangerous or difficult for travelling. I do not know the name of the driver. I believed him somewhat intoxicated at the last change of horses and so remarked, and believe that his intoxication was increased whilst driving, as I had reason to believe he was drinking with a man on the driver's seat alongside of him, who was dressed as a gunner, and carried a rifle; he had also a canteen or flask. He let the rifle fall several times, and the driver would stop for him to get down and pick it up. The flask he had regularly filled at every stopping place, until it was finally refused him. He finally, in attempting to pick up his rifle which had fallen, fell himself, and was unable to rise. We left him to be taken up by the stage after us, as we were the "fast line," and obliged to keep our time.

To the fifth interrogatory, I cannot say exactly as to the extent of the injury, but plaintiff's wife appeared to be dangerously hurt, so much so that I and my wife were unwilling to leave her until the physician, who had been sent for to Hancock, gave his opinion that the sufferer would recover; this was, I believe, on the sixth day after the upset, and we left on the seventh. Mr. Saltonstall and his wife did not attempt to prosecute their journey. When we left, Mrs. Saltonstall, though considered out of danger, was lying on a bed perfectly helpless.

To the sixth interrogatory, I neither saw plaintiff nor his wife until July following, when I met them in Philadelphia, Mrs. Saltonstall was still in a dreadful condition, and wholly unable to walk, except with the assistance of crutches, and I do not believe she will ever recover during the course of her life. It may be proper here to remark, that either owing to the driver's ignorance or intoxication, or perhaps to the fact of having overturned, the horses had completely changed their positions, so that instead of being with their heads towards our place of destination, they were towards the place we came from.

Cross interrogatories. To the cross interrogatories the deponent answers and says as follows:—

To the first cross interrogatory, I have answered this in my answer to the fourth interrogatory in chief.

To the second cross interrogatory, I cannot say whether plaintiff or his wife would have been injured if they had remained in the stage or not, none of the other passengers to my knowledge were injured, at least I heard no remarks to that effect.

To the third cross interrogatory, I did not know the driver, as I have before stated, but I judged that he was intoxicated from his reckless and irregular manner of driving, which produced repeated remonstrances on the part of the passengers, the which were however wholly unattended to, and from his apparently stupid and drunken manner of conduct after the upset. He was totally unfit for any thing; he could not, or would not answer a question, nor afford the least possible assistance.

To the fourth cross interrogatory, what the speed was per mile I cannot say; immediately previous, however, in the valley, we were driven at a furious rate; at the time of the overturning, we had just reached the top of the hill, and the horses were going moderately.

To the fifth cross interrogatory, I do not remember the distance driven by the driver, but know that the passengers, so far from expressing themselves satisfied with him, signified just the contrary.

To the sixth cross interrogatory, the day on which the accident occurred was very cold, but neither sleety nor rainy.

JAMES STIFF.

Deposition of Mrs. Jane Stiff.

And the said Mrs. Jane Stiff, having first by us been sworn on her corporal oath, upon the Holy Evangely of Almighty God, did depose and say as follows, to wit:

To the first interrogatory, I only know the plaintiff.

To the second interrogatory, I was during the winter of '35 and '36 travelling with the plaintiff and his wife, as passengers in one of Stockton & Stokes' line of stages, from Baltimore to Wheeling, and do personally know of the upsetting or overturning of the stage we were in.

To the third interrogatory, I did not know any of the passengers except Mr. Saltonstall and wife; after the last change previous to the accident, I was in common with the other passengers, particularly the females, very much alarmed at the furious driving of the driver. Mrs. Saltonstall attempted several times to persuade her husband to get out and take the reins from the driver. I cannot particularly describe the circumstances of the accident, being so much alarmed, and after it occurred I was too much occupied with the condition of Mrs. Saltonstall to observe any thing particularly. The accident occurred in the afternoon

before sundown. I do not know the extent of the injury sustained by Mrs. Saltonstall, but it was of such a nature as to induce myself and husband to remain several days until the medical attendant considered the principal danger past. The injury Mrs. Saltonstall sustained was in my opinion occasioned by the stage falling on her.

To the fourth interrogatory, I did not observe particularly the state of the road, nor can I say of my own knowledge the driver was intoxicated or not, but I did hear the remark made by some of the passengers that he was.

To the fifth interrogatory, after the accident, Mrs. Saltonstall was removed on a litter formed of the leather of the boot to a log hut, from which it was found impossible to move her during our stay. The attempt was made once, but was given up as it was found she would expire under it.

To the sixth interrogatory, I did not see Mr. Saltonstall or his wife until July following, when I met them in Philadelphia; when I saw her, she was a perfect cripple.

To the cross interrogatories the deponent answers and says as follows:—

To the first cross interrogatory, I was, as previously stated, very much alarmed, and cannot pretend to answer this interrogatory from my own observation.

To the second cross interrogatory, I cannot say that the plaintiff or his wife would or would not have been injured. I am not aware of any of the other passengers being hurt beyond simple bruises.

To the third cross interrogatory, my answer to this is contained in my previous answers.

To the fourth cross interrogatory, I cannot say.

To the fifth cross interrogatory, I cannot say, further than that the passengers were not satisfied, or rather expressed themselves dissatisfied with the driver.

To the sixth cross interrogatory, The weather was cold but clear, and the sun was shining.

JANE STIFF.

Thus done and executed at New Orleans, on the day and date aforesaid. In testimony whereof we have hereunto set our hands and seals.

LEVI PIERCE, [SEAL]
BAILIE PEYTON, [SEAL]

J. R. STERRETT, *Clerk.*

And also the following deposition taken by consent.

Deposition of Doctor Smith.

UNITED STATES OF AMERICA,
District and State of Maryland, sct.

Be it remembered, that on this eighteenth day of Octo-

ber, in the year of our Lord one thousand eight hundred and thirty-eight, at the city of Baltimore, before me, John Hanan, a commissioner appointed by the Circuit Court of the United States, for the district aforesaid, in the fourth circuit of the said United States, under and by virtue of the act of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," personally appeared Nathan R. Smith, a witness for the plaintiff in a certain civil cause now depending in the Circuit Court of the said United States, for the District of Maryland, wherein Francis W. Saltonstall is plaintiff, and Richard C. Stockton and William B. Stokes are defendants. And the said witness being by me first carefully examined, and cautioned, and sworn to testify the whole truth, makes oath, deposeth and saith, That early in the month of April, eighteen hundred and thirty-six, deponent visited Mrs. Saltonstall, at Bevans', beyond the sidling hill, on account of an injury which she had received by the upsetting of a stage-coach. The injury had been received, as deponent learned some three months before, but she was still suffering from its effects. On making a careful examination, deponent ascertained the injury to have been a fracture of the pelvis, (that strong portion of the bones of the trunk to which the thigh bones are attached.) The fracture extended from the posterior part of the spine of the ilium, to the sciatic notch. It is one which is rarely, if ever, produced, except by the falling of some heavy body upon that part of the trunk; and of all fractures, it is one of the most terrible in regard to immediate suffering and ultimate results. The injury renders the body incapable of motion, without great suffering, and always requires a protracted and painful confinement, often of months. It generally results, also, in more or less deformity and lameness, and such will be the consequences in the case of Mrs. Saltonstall, although will be able to walk. It is an injury which very frequently terminates fatally, and deponent regarded the recovery of the patient in this case as a matter of some surprise, considering the great disadvantages under which she was treated. In consequence of her inability to move, she required the most laborious attention on the part of her nurses and husband, and without it she must have perished.

Mrs. Saltonstall returned to Baltimore some three or four weeks after deponent saw her; being encouraged, then, to make exertion, she could then walk a few steps. Deponent has not seen her since, and knows nothing of her present condition. The amount of deponent's bill, for the visit and letters of advice, was one hundred and fifty dollars.

NATHAN R. SMITH.

UNITED STATES OF AMERICA,
District and State of Maryland, sct.

I, John Hanan, a commissioner appointed by the Circuit Court of the United States for the district aforesaid, in the fourth circuit of the said United States, under and by virtue of the act of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, do hereby certify, that the reason for taking the deposition hereunto annexed, of Nathan R. Smith, is, that said witness is about to leave the State of Maryland. I do further certify, that said deposition was taken by the consent of the counsel for the respective parties.

I do further certify that I am not of counsel or attorney to either of the parties in said deposition mentioned, nor interested in the event thereof. That the said deposition was reduced to writing by me, and thereafter subscribed by the said deponent in my presence. In testimony whereof, I have hereunto set my hand and seal this eighteenth day of October, one thousand eight hundred and thirty-eight, at the city of Baltimore, in the State aforesaid.

JOHN HANAN, [SEAL]
Commissioner Circuit Court, U. S.

Evidence of Doctor O'Donnell.

And also proved by Doctor O'Donnell that he saw the plaintiff's wife the night after the accident; that she had been carried to a miserable house not fit for human beings to live in; she was there suffering both in body and mind, and was apprehensive she would not recover. The house was a log hut, and the family living there went into the kitchen to reside. After Mrs. Saltonstall was carried into it, he proved a flattening of the pelvis on the left hip, a protuberance of the right hip, and a hollow near the joint of the left hip. He concluded there was a fracture of the thigh, the attempt to reduce which might prove fatal. She remained in this place incapable of being moved from the sixth to the eighteenth of December, when she was removed to "Bevansville," where she staid till the 18th of May. That he found the fracture to be such as Dr. Smith, in his deposition, has described, and his opinion is that she must remain a cripple for life.

Evidence of Mr. Ware.

And also proved by Mr. Ware, that he was travelling from Baltimore to Wheeling in another stage on the day on which this accident occurred, and shortly after the upsetting of the coach, and after she had been extricated therefrom, came up to the place where Mrs. Saltonsall was lying after the upsetting of the coach. The stage was from

30 to 50 feet off the road. Witness assisted in carrying her to the hut. The place where the upset occurred was on the top of the hill; there was a gentle inclination; the road was very good, and entirely free from ice in the centre, and there was but very little ice on the side of the road. Witness saw the driver as he passed the coach in which witness was, and also saw a huntsman riding with him very drunk. He also saw the driver after the accident, but had no conversation with him; he thought him drunk; he stood up in the road and gave no assistance. The driver had passed the coach in which witness was whilst the horses were watering. The huntsman fell off, and was left behind; the day was very cold and clear; there was very little ice anywhere, and none in the middle of the road.

Evidence of Mr. Sanderson.

Plaintiff also proved by Mr. Sanderson that he was in the same coach with Mr. Ward, and saw Mrs. Saltonstall after the accident. He also saw the driver, who looked stupid; he neither gave nor offered assistance. He looked alarmed, and witness thought him drunk. The day was extremely cold; that the road was very good at the place of the accident, and free from ice in the centre; that the road was so good there, that the horses, in his opinion, would have gone safely without a driver.

Evidence of Mr. Ludlow.

Plaintiff also proved by Mr. Ludlow, that he was in the same coach with Mr. Ware, and came up shortly after the accident happened; that he saw the coach in which Mrs. Saltonstall had been riding; it was from 30 to 50 feet off the road, which was perfectly good, and one upon which a stage would not be likely to upset; witness went up to the driver, and had some conversation with him. (The defendant's counsel objected to the statements of the driver being admitted in evidence, but the Court decided them to be admissible, to which the counsel for the defendants excepted.) The plaintiff then further proved by Mr. Ludlow that he asked the driver how the accident happened, when he stated that he had upset fifty coaches, and he did not believe the woman was as much hurt as she said she was. Witness thought he was not sober at the time.

Evidence of Mr. Earle.

Plaintiff also proved by Mr. Earle that he knew Sam Horne, driver of defendant's coach before and after the accident; that he was intemperate in his habits; that deponent was agent for the People's Line, and had him in their service for a short time, supposing him reformed, but found him intemperate, and discharged him.

And the plaintiff also proved that he had expended before the bringing of this action, in and about attendance upon his wife, and for medical and other expenses in order to her recovery, the sum of eleven hundred and thirty dollars. And also proved the payment to the defendants of the stage fare for himself and wife from Baltimore to Wheeling, for the

journey in the defendants' stages during which the aforementioned injury was done to his wife, before the journey commenced.

Mr. Carlton's evidence for the defendants.

Thereupon the defendant proved by Mr. Carlton, that on the day the accident happened he saw Sam Horn, as he mounted the box to proceed on his route, which was twenty-two miles, and about 19 or 20 miles from the place of the upsetting, he was then perfectly sober. Witness knew Sam Horn and always understood that he was the best driver on the road; never saw him drunk. He drove the mail. By the regulations of the Postoffice Department, all postmasters along the road are required, if they see any driver intoxicated, to report him to the contractors for dismissal; and if not dismissed by them, to have him dismissed himself; that he never saw or heard that Sam Horn was intemperate. Witness saw the road two days after the accident, and the place where it occurred, the right side was icy, the left side oval. Witness has been in stages when the hinder part of the stage, by slipping on the ice, has got before. The only course, in case the stage slips, is to whip on the horses faster than the stage goes; he saw the plaintiff, who stated that he had got out of the stage before it upset, and his wife was following him, when the coach upset, and the boot struck her.

Evidence on cross examination.

The witness Carlton, on cross-examination, also stated that he was the Postmaster at Cumberland; that the route which Horn drove along at the time of the accident, and for two or three years before, began 44 miles east of Cumberland, and terminated at Bevans' tavern, about 22 miles east of it, and the witness had not, therefore, during that time, any personal observation of Horn's conduct whilst driving; and that during that period he only saw him occasionally when he came to Cumberland to see his family.

Defendants' evidence by Wm. Ferguson.

Defendant then proved by William Ferguson, that he was agent for defendant at the tavern, about nine miles from where the accident happened; that he saw Sam Horn when he drove up; that the horses and coaches were both changed. Sam was then perfectly sober, and took nothing to drink; he there correctly attended to his business. Witness saw the place where the accident happened. The road there is very rounding and high in the middle; it was icy, the dust having blown over it, and covered it. He saw the tracks of the coach where it went off; and deponent, who had been a driver for ten years, thinks the course taken by Horn was the one he would have adopted. Sam was one of the best drivers in the line, had been eleven years driving for Reeside, and witness never saw him drunk or knew him to be so. Witness also states that he was the person with whom the plaintiff had the conversation as Mann's tavern, referred to in the deposition of Mr. Stiff, and admitted that he had held

the conversation with the plaintiff as stated by said witness. He also stated that he saw at Mann's tavern, at same time, the person who rode on the box with the driver, and who is referred to in the deposition of the said witness, Stiff, and by the witness Ware, as the person who rode with the driver and appeared to be a huntsman, and that he did not appear to be drunk at that time, but that he had no conversation with him, and did not observe him particularly.

Defendants' evidence by Mr Falls.

Defendant also proved by Mr. Falls, an agent of the defendants at the time of the upsetting, that he saw Sam Horn as he mounted the box on his route, which was about 19 or 20 miles from the place of the accident; he was then perfectly sober. He had been one or two years driver for defendant, and was considered a first rate driver, and a sober man. Witness never heard of his being intemperate. Witness also proved that the day was very cold, that he saw the place where the accident occurred. The road was oval, high in the middle, with ice upon it, covered with dust—a small ditch upon the right side into which the stage had gone; that Mr. Saltonstall told witness the carriage was almost stationary when he got out, and took his wife out on the lower side, when the coach turned over, and the boot struck and injured her. Witness proved that in such weather any one riding exposed looks like a drunken man. Witness Falls also stated that in his opinion the going off and upsetting of the stage might be accounted for by the slippery and icy condition of the road at the place, and by the driver's driving off the road on that account, as a proper measure of security; and was then asked by the plaintiff's counsel, on cross-examination, if he had not at another period endeavoured to account for the upsetting in a different manner, and particularly whether he did not give a different account of it to his employers, the defendants, shortly after the accident? In reply to which, witness stated that he had addressed a letter to his employers, the defendants, in relation to the upsetting, shortly after the occurrence of it, which letter was then produced, and was, by consent, read to the jury.

Cross-examination of Mr. Falls.

Cumberland, Dec. 29th, 1835.

Letter from M. N. Falls to Stockton & Stokes, dated Cumberland, 29th Dec. 1835.

Messrs. Stockton & Stokes,

Gentlemen—In reply to your inquiries respecting the accident that took place a few weeks ago, by which Mrs. Saltonstall was injured, I have to state, that I was on the road between Sideling Hill and Hagerstown the day it took place, and heard of it the next morning at Hagerstown. I called on them next day with my private carriage, and offered it to them to remove the lady to a more convenient house; but Mr. Saltonstall thought his wife was not well enough to be moved. I then offered my carriage at any

time he wished, and gave Mr. S. my address, which he promised to use whenever occasion might require. I also repeatedly asked him if there was any thing I could do for him, or any comfort I could send him? he thanked me very kindly, but said he needed nothing but a small article for the use of his wife, who could not get out of bed when occasion required, and would esteem it a favour if I could get it for him, as there was nothing of the kind nearer than Cumberland, twenty-two miles off. I told him I would go to Cumberland that day, and he should have it as quick as horses could do it. I did so, although it was one o'clock, P. M. when I saw him; and at the same time renewed my offer to do any and every thing that could add to their comfort.

Mr. James P. Carlton, our postmaster, and Mr. Ferguson, the travelling agent of the line, (he, Mr. Saltonstall told us, that just before the stage upset, he got out of the stage, and *assisted* his wife out, who was afterward injured by the top or the boot of the stage striking her when it upset). The other passengers who were inside give the *same version* of the accident. Neither they nor the coach were injured. *Mr. Saltonstall said that the driver was drunk:* as regards that, *all I can* say is, that I saw the driver at Mrs. Bevans' when he mounted the box, which is the commencement of the route, and spoke with him; he was then perfectly sober. (

) I next examined the place where the stage upset, which was immediately as they commenced descending the mountain; it was perfectly covered with ice, and the gutter on side road was just deep enough to overturn a coach, the road being perfectly rounding at that place, very little would throw a carriage into it. I was thus particular in examining into the circumstances, that I might do justice to the driver; and although I had him discharged, it was more to appease the feelings of the persons hurt than any direct evidence I had of his want of attention, or being drunk. I believe the true way of accounting for the accident was that the driver dropped one of his reins just as he was gathering up his horses to descend the mountain, or was attending to fixing his braking machine, which was very likely to happen after driving such a distance on such a cold day, for it was extremely cold; and you know a person who is suffering from extreme cold, looks as much like a drunken man as any thing else. Mr. Carlton and Mr. Ferguson, who I have before mentioned, were with me, and saw and heard every particular. I will get Mr. Carlton to certify on oath to what I have written. Mr. Ferguson is out of town, but I will send you his deposition by next mail.

Very respectfully,

Your obedient Servant,

M. N. FALLS.

Sworn to, &c. by Falls and Carlton.

Defendants also proved by Ferguson that the coach and harness which Horn was driving, were properly made and of sufficient strength, and that the horses were good and steady.

Thereupon the defendant's counsel made the following prayers to the court:

FRANCIS W. SALTONSTALL *vs.* WILLIAM B. STOKES. } Defendant's Prayers.

Defendant's prayers.

First. If the jury shall believe from the evidence in the cause, that the injury to the plaintiff's wife was occasioned solely by the overturning of the coach, and by its falling upon her; and that such overturning was occasioned by the act of the plaintiff and his wife, or either of them, in leaping from, or otherwise in leaving the said coach; and shall further believe, from the evidence in the cause, that, at the time of such leaping from, or of such leaving, said coach, there did not exist any certain peril, nor any immediate danger, of personal injury, nor any reasonable cause of apprehension of impending danger by remaining in the coach, then the plaintiff is not entitled to recover upon the issue joined in this case, in respect to the said injury sustained by his said wife, even if they also believe from the evidence in the cause, that the driver was guilty of carelessness, negligence, and misconduct, in placing the coach in the particular place and situation in which it was at the time of such leaping from, or leaving, said coach.

Second. If the jury shall believe from the evidence in the cause, that the injury to the plaintiff's wife was occasioned solely by the overturning of the coach, and its falling upon her; and that such overturning was occasioned by the act of the plaintiff and his wife, or either of them, in leaping from, or otherwise in leaving said coach, and shall further believe from the evidence in the cause, that such leaping from, or such leaving said coach, was not under the actual circumstances an act of prudent precaution for the purpose of self-preservation; nor such an act as a person of ordinary care, prudence, or resolution would have adopted, under the actual circumstances, even if they shall believe from the evidence that such leaping from, or such leaving of said coach, was under the existence and incitement of actual alarm and apprehension of supposed impending danger, then the plaintiff is not entitled to recover upon the issue joined in this cause, in respect of said injury sustained by his said wife.

Third. If the jury shall believe from the evidence in the cause, that the injury sustained by the plaintiff's wife was occasioned solely by the overturning of the coach, and by its falling upon her; and that such overturning was occasioned by

the act of the plaintiff and his said wife, or by the act of either of them, in leaping from, or otherwise in leaving said coach; and shall further believe, from the evidence in the cause, that such leaping from, or leaving of, said coach, was not effected with proper caution and prudence, under the actual circumstances, as well in reference to the situation in which the said plaintiff and his wife (if the overturning was occasioned by the act of both) were placed; or, if such overturning was occasioned only by the act of one, in reference to the situation of such one of them, by whom such overturning was occasioned was placed; as also in reference to the situation in which said coach was placed in position, with respect to the ground on which it stood, and otherwise, then the plaintiff is not entitled to recover, in respect to said injury to his said wife.

Fourth. If the jury shall believe from the evidence in the cause, that the injury to the plaintiff's wife was occasioned solely by the falling of the coach upon her, and that she was then outside of the coach and on the ground; and shall further believe, that at the time she leapt from, or left the coach, she knew, or believed, that it was overturning, or about to overturn, and leapt from, or left it for that cause, and that she designedly alighted on the ground in the direction in which the coach was overturning, or about to overturn, that then, such her act was a rash and imprudent act, and the defendant is not responsible upon the issue joined in this cause for the injury which she so sustained; even if the jury shall, at the same time, believe that such overturning was occasioned by the fault or negligence of the driver.

Fifth. If the jury shall find, from the evidence, that the plaintiff's wife, if she had remained in the coach, would not have been *materially* injured by the overturning of the same; and shall find from all the evidence in the cause, that a discreet and prudent person, under the circumstances in which she was placed as disclosed in evidence, would have, and ought to have, remained in the coach; and that she placed herself imprudently, and indiscreetly, and rashly in the way of incurring the actual injury which she sustained, that then the defendant is not liable, upon the issue joined in this case, to answer in damages for such injury.

Sixth. If the jury shall believe from the evidence in the cause, that the plaintiff and his wife, or either of them, by leaping from the coach, or leaving the same, *contributed*, in fact, to produce the happening of the injury to the plaintiff's wife, which she actually sustained; and shall further believe, that in so leaping from, or leaving the said coach, the same was done unnecessarily and indiscreetly, or imprudently, or rashly, incautiously, or without ordinary care; that then the plaintiff is not entitled to recover in respect of said injury; even if the jury shall believe that the driver was guilty of

gross negligence and misconduct, and was partly, or even mainly the cause of the happening of such injury.

Seventh. If the jury shall believe that the plaintiff and his wife, or either of them were, or was to blame in any degree, conducing to produce the result of the injury actually sustained, then the plaintiff is not entitled to recover, although they should believe from the evidence in the cause, that the driver was guilty of gross negligence and misconduct.

Eighth. If the jury shall believe, from the evidence in the cause, that the plaintiff's wife was injured by the overturning of the coach, and its falling upon her person, and not otherwise, then the plaintiff is not entitled to recover, unless the jury shall be satisfied from the evidence in the cause, that such overturning was owing exclusively to the negligence or misconduct of the driver, without any want of ordinary care, diligence, or due precaution, and without any negligence, blame, or fault on the part of the plaintiff and his said wife, or of either of them conducing in any degree to the result of the injury, then the plaintiff is not entitled to recover. And farther, that if the jury shall be in doubt, whether there was not some negligence, blame, or fault, want of ordinary care, diligence, or due precaution on the part of the plaintiff and his said wife, or of either of them, then they ought to find a verdict for the defendant.

Ninth. The defendant by his counsel, prays the court to instruct the jury, that if they shall believe from the evidence in the cause, that the plaintiff's wife was injured by the overturning of the coach and not otherwise, and that such overturning was occasioned, proximately or primarily, by reason of the driver having dropt his rein in descending the mountain, and that such dropping of the rein was occasioned by the combined effect of severe cold upon his hands, and the necessity of fixing the braking machine for the purpose of descending the mountain; and that the same was accidental, without any fault, negligence, or misconduct on the part of the said driver, that then the plaintiff is not entitled to recover in respect of any injury to his said wife.

Tenth. If the jury shall be of opinion that leaping from the coach by Mrs. Saltonstall as described in the testimony, was not an act of prudent precaution for the purpose of self-preservation, then the plaintiff is not entitled to recover.

Eleventh. If the jury shall be of opinion that the act of Mrs. Saltonstall in leaping from the coach at the time and in the manner stated in the evidence, was a measure adopted by a mind unreasonably alarmed, and was not the course which a reasonable and prudent mind would have adopted, then plaintiff cannot recover in this case.

Twelfth. If the jury shall believe that this the negligence or unskilfulness of the driver of defendants, there was

danger of the coach being upset, in which Mrs. Saltonstall was riding, that the plaintiff is not entitled to recover, if Mrs. Saltonstall did not use proper prudence and caution in attempting to extricate herself therefrom, and that proper prudence and caution, is such prudence and caution as a mind of ordinary care and resolution would have adopted.

Thirteenth. If the jury shall be of opinion that the plaintiff by remaining in the coach would have sustained no material injury, and if they shall further find that remaining in the coach would have been the course adopted by a discreet and prudent person having ordinary fortitude and prudence under the circumstances in which the plaintiff was placed, then the plaintiff is not entitled to recover.

Fourteenth. If the jury believe that this the want of ordinary care and prudence, the plaintiff's wife contributed to the injury which she sustained, then the plaintiff is not entitled to recover.

Fifteenth. That the jury in order to find for the plaintiff must be satisfied that the injury arising to the plaintiff's wife was occasioned by the negligence of the defendant's driver alone, and not from any want of ordinary care on the part of plaintiff's wife, and if the jury shall believe that it is doubtful whether such was the case, then the plaintiff is not entitled to recover.

Sixteenth. That the prima facie evidence of negligence arising from the fact of the upsetting of the coach, and the injury to the plaintiff's wife, is rebutted by the proof of the fact, if the jury so believe from the evidence, that the defendants had a first rate coach, a competent set of horses, and good and proper harness, and a competent, prudent, and careful driver at the time of the accident, and that then the burthen of proving negligence is thrown upon the plaintiff.

And the plaintiff made the following prayers.

FRANCIS W. SALTONSTALL
vs.
WILLIAM B. STOKES. } Plaintiff's Prayers.

Plaintiff's Prayers.

First. If the jury find from the evidence that the injury done to the plaintiff's wife was by the upsetting of defendant's stage, that then such upsetting and injury are prima facie evidence of such negligence and want of skill in defendant's driver, as entitles the plaintiff to recover in this action, unless otherwise satisfactorily accounted for, and that the burthen of accounting for it by proving to the jury that there was no negligence or want of skill in the driver, but that on the contrary, notwithstanding the exertion of the greatest care and skill on his part the upsetting and injury occurred, is on the defendant.

Second. If the jury find from the evidence that a driver of proper skill and care knowing the condition of the road,

and actually exercising such skill and care, could have driven the defendant's stage with safety over that part of the road on which the accident occurred, that then such upsetting was in legal acceptation the result of such negligence and want of skill, as renders the defendant liable, and entitles the plaintiff to a verdict if the jury find that plaintiff's wife was injured by the upsetting.

All of which were refused by the court, who gave the following instruction.

THE COURT INSTRUCT THE JURY,

Court's instruction to the jury.

First. That the defendant is not liable in this action unless the jury find that the injury of which the plaintiff complains was occasioned by the negligence or want of proper skill or care in the driver of the carriage, in which he and his wife were passengers: and the facts that the carriage was upset, and the plaintiff's wife injured, are prima facie evidence that there was carelessness, or negligence, or want of skill on the part of the driver, and throws upon the defendant the burthen of proving that the accident was not occasioned by the driver's fault.

Second. It being admitted that the carriage was upset and the plaintiff's wife injured, it is incumbent on the defendant to prove that the driver was a person of competent skill, of good habits, and in every respect qualified, and suitably prepared for the business in which he was engaged: and that he acted on this occasion with reasonable skill, and with the utmost prudence and caution; and if the disaster in question was occasioned by the least negligence, or want of skill, or prudence on his part, then the defendant is liable in this action.

Third. If the jury find there was no want of proper skill, or care, or caution on the part of the driver, and that the stage was upset by the act of the plaintiff or his wife, in rashly and improperly springing from it, then the defendant is not liable to this action; but if the want of proper skill or care of the driver placed the passengers in a state of peril, and they had at that time a reasonable ground for supposing that the stage would upset, or that the driver was incapable of managing his horses, the plaintiff is entitled to recover, although the jury may believe from the position in which the stage was placed by the negligence of the driver, the attempt of the plaintiff or his wife to escape, may have increased the peril, or even caused the stage to upset; and although they may also find that the plaintiff and his wife would probably have sustained little or no injury if they had remained in the stage.

Fourth. If the jury shall find that the driver was a person of competent skill, and in every respect qualified and suitably prepared for the business in which he was engaged, and

that the accident was occasioned by no fault or want of skill or care on his part, or that of the defendant or his agents, but by physical disability arising from extreme and unusual cold which rendered him incapable for the time to do his duty, then the defendant is not liable in this action.

To which refusal of the defendant's prayers and each and every of them, and to which direction of the court and each and every of them the defendant prayed leave to except, and that the court would sign and seal this exception, which is is done accordingly this 30th November, 1838.

R. B. TANEY, (SEAL.)
U. S. HEATH, (SEAL.)

Afterwards, to wit: On the first day of December, in the year of our Lord one thousand eight hundred and thirty-eight, the aforesaid William B. Stokes, by his attorneys aforesaid, produced to the said Circuit Court here, the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same to be transmitted to the Supreme Court of the United States to be held at the City of Washington on the second Monday in January next, which said writ of error is in the words and of the tenor following, to wit:—

UNITED STATES OF AMERICA, *ss.*

The President of the United States
To the Judges of the Circuit Court of the United States for the District of Maryland, Greeting:

Because in the record and proceedings, as also in the condition of the judgment of a plea, which is in the said Circuit Court, before you or some of you, between Francis W. Saltonstall, plaintiff, and William B. Stokes, defendant, a manifest error hath happened, to the great damage of the said William B. Stokes, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and (and) proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States together with this writ, so that you have the same at Washington, on the second Monday in January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done. Witness the Honorable Roger B. Taney, Chief Justice of our Su-

preme Court, the first Monday in August, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued 1*st Decem.* 1838.

THO. SPICER, *Clerk Circuit Court.*

In pursuance whereof, and according to the form and effect of the act of Congress of the United States in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

THE UNITED STATES OF AMERICA,

To Francis W. Saltonstall, Greeting:

Citation. You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at the city of Washington on the second Monday in January next, pursuant to a writ of Error filed in the Clerk's office of the Circuit Court of the United States for the fourth circuit in and for the Maryland District, wherein you are plaintiff, and William B. Stokes is defendant, to show cause, if any there be, why the judgment rendered against the said William B. Stokes, in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf. Witness my hand and seal this sixth day of December, 1838.

R. B. TANEY, [SEAL.]

Service of the above citation acknowledged.

J. V. L. McMahon.

Bond. Know all men by these presents that we William B. Stokes, Lucius W. Stockton, and Moore N. Falls, of the city of Baltimore, are held and firmly bound unto Francis W. Saltonstall, a citizen of the state of Massachusetts in the full and just sum of fourteen thousand two hundred and sixty dollars lawful money of the United States, to be paid unto the said Francis W. Saltonstall, his heirs, executors, administrators or assigns, to which payment well and truly to be made and done, we being ourselves, our heirs, executors and administrators jointly and severally firmly by these presents, sealed with our seals, and dated this fourth day of December in the year of our Lord one thousand eight hundred and thirty-eight. Whereas at a Circuit Court of the United States for the fourth circuit in and for the Maryland District, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and thirty-eight, the said Francis W. Saltonstall, by the judgment of the same court recovered against the